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JAN 22 2010

OFFICE OF PETITIONS

In re Application of
Sundararajan Sriram
Application No. 10/658,902
Filed: September 10, 2003
Attorney Docket No. TI-28564.1

ON PETITION

This is a decision on the request for reconsideration filed November 25, 2008, to withdraw the holding of abandonment, which is being treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.181(b) is **GRANTED**.

This application became abandoned August 10, 2007 for failure to timely reply to the Notice to File Corrected Application Papers sent via email notification on July 9, 2007 and which set a thirty day period for response. No response having been filed, a Notice of Abandonment was mailed November 6, 2007. While the file record discloses that the Notice to File Corrected Application Papers was sent to what was believed to be the email address of record, petitioner contends that it was not received. A petition filed November 20, 2007 and treated under 37 CFR 1.181 was dismissed in a decision mailed June 10, 2008 because the requirements under 37 CFR 1.181 were not met. A request for reconsideration filed July 17, 2008 was dismissed in a decision mailed November 7, 2008 because as was indicated in the decision mailed June 10, 2008, the July 17, 2008 still did not provide corroborating evidence to prove non-receipt. A request for reconsideration filed November 25, 2009 was also dismissed in a decision mailed December 23, 2009 because the requirement under 37 CFR 1.181, to submit copies of the actual docket records or file jacket, including the "Master Docket", to show non-receipt had not been met. M.P.E.P. 711.03(c).¹

¹ In Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay

Comes now petitioner with copies of the "Master Docket" to show that the Notice to File Corrected Application Papers sent via email notification on July 9, 2007 was not received.

In that the statement from the petitioner and the exhibits from the "Master Docket", show no entry indicating receipt of the Notice to File Corrected Application Papers sent via email notification on July 9, 2007, it is apparent that it was not received.

The evidence submitted corroborates non-receipt of the Notice to File Corrected Application Papers.

In view of the facts set forth in the petition, it is concluded that the Notice to File Corrected Application Papers sent via email notification on July 9, 2007 was never received at the e-mail address of record.

the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

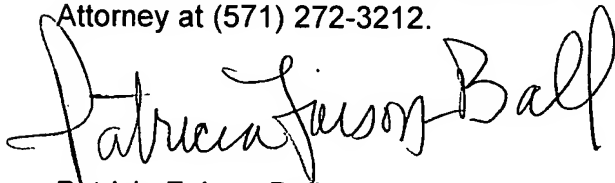
A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, **a copy of the master docket report** showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. **If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.**

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Accordingly, the Notice of Abandonment is withdrawn and in view of the response to the Notice to File Corrected Application Papers, filed with the July 17, 2008 petition, this matter is being referred to the Office of Patent Publication.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions